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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/552,105	04/19/2000	Peter H. Schmidt	1331-US	3061

24313	7590	03/13/2006

TERADYNE, INC
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EXAMINER
NGUYEN, PHUOC H

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>03 March 2006</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20 and 22-25* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20 and 22-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☒ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. <u>March 2, 2006</u>.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Double Patenting

1.   The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985) *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

2.   A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

3.   Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4.   Claims 1-20 and 22-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 of U.S. Patent No. 6,654,914. Although the conflicting claims are not identical, they are not patentably distinct from each other

because the context of the claimed invention is the same as the context of the cited claims of the

U.S. patent.

5.   This application is in condition for allowance except for the following formal matters:

        I.   Applicant is requested to file a terminal disclaimer.

A shortened statutory period for reply to this action is set to expire TWO MONTHS from

the mailing date of this letter.

Response to Amendment

6.   This office action is in response to the applicants Amendment filed on December 8, 2005.

7.   Applicant's arguments with respect to claim 1 have been considered but are moot in view

of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8.   Claims 1-12, and 15-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Caswell et al. (Hereafter, Caswell) U.S. Patent 5,964,891 in view of Frowein et al. (Hereafter,

Frowein) U.S. Patent 6,665,820.

Referring to claim 1, Caswell reference disclose providing a diagnostic unit (e.g. Figure

2, Diagnostic Terminal 106 or Diagnostic servers 120, and 130-132) with a diagnostic website (col. 8, lines 20-21; and lines 33-35); receiving, through the diagnostic website with the diagnostic unit, a communication from a subscriber experiencing a problem with a network (col. 8, lines 35-37); and communicating, with said diagnostic unit, with a selected network element (e.g. Service systems 101-103) (col. 8, lines 39-40); however, Caswell fails to teach determining with said diagnostic unit fault information of said subscriber terminal from portion of said communication generated by the subscriber terminal

Frowein teaches a system of capable of determining the fault of said subscriber terminal from portion of communication generated by the subscriber terminal (col. 10 lines 25-55).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Frowein's teaching into Caswell's method to determine the configuration information from a portion of the communication generated by the subscribing terminal in order to determine whether the fault is coming from the subscriber terminal or from others devices. So it can isolate the fault more quickly.

Referring to claims 2,3, and 6, Caswell reference disclose a subscriber is experiencing a problem (e.g. When the subscriber is misconfigured) with a network and report it to the diagnostic terminal through a web browser for diagnosis purposes; however, Caswell fail to teach the communication between the subscriber and diagnostic terminal is utilizing fault tolerant protocol stack.

Frowein reference discloses system of capable of receiving a connectivity failure between the subscriber terminal and the on-line center and relay data from the online center to the subscribing station and includes a communication portion in the online center and a

communication portion in the subscribing station (col. 10 lines 19-38) (e.g. acknowledge the

communication failure between two endpoints and capable of relaying the data between two end

point is considered to be the fault tolerant protocol stack).

It would have been obvious to one of the ordinary skill in the art at the time of the

invention was made to incorporate Frowein's teaching into Caswell's method to utilize the fault

tolerant protocol stack to communicate between devices, as a result, it will provide the ability to

support multiple protocols and provide greater flexibility to communicate between devices.

Referring to claim 4, Caswell reference disclose the network comprises the internet and

an access network managed by an internet service provider, and the diagnostic unit is installed

within the access network and the network element is connected to the diagnostic unit through

the internet (Figure 2).

4.   Referring to claim 5, Caswell reference disclose information electronically to a support

operator (col. 4, lines 27-45; and col. 6, last paragraph through col. 7, 1st paragraph).

5.   Referring to claims 7,8, and 9, Caswell reference disclose obtaining an identification of

said subscriber includes determining username of said subscriber (Figure 10).

6.   Referring to claims 10, Caswell reference disclose determining fault information includes

the step of emulating with said diagnostic unit at least one of login services to said subscriber,

authentication services to said subscriber e-mail services to said subscriber and the Internet to

said subscriber (Figure 2; and col. 5, lines 49-62).

7.   Referring to claim 11, Caswell reference disclose determining fault information including

analyzing with said diagnostic unit the format of data sent by said subscriber (Figure 8).

Referring to claim 12, Caswell reference discloses a method for reporting the fault from

the subscriber terminal to the diagnostic; however, Caswell fails to teach determine fault

information includes the step of negotiating a protocol between said subscriber and said

diagnostic, said protocol selected from the group consisting of modem training, network control

protocols, authentication protocols, compression protocols and upper layer protocols.

Frowein reference discloses system of capable of receiving a connectivity failure between

the subscriber terminal and the on-line center and relay data from the online center to the

subscribing station and includes a communication portion in the online center and a

communication portion in the subscribing station (col. 10 lines 19-38).

It would have been obvious to one of the ordinary skill in the art at the time of the

invention was made to incorporate Frowein's teaching into Caswell's method to utilize the fault

tolerant protocol stack to communicate between devices, as a result, it will provide the ability to

support multiple protocols and provide greater flexibility to communicate between devices.

8.   Referring to claim 13, Caswell reference disclose determining the fault information

includes authentication a password supplied by said subscriber for Internet Service Provider

(ISP) Net; Caswell does not explicitly teach that authenticating a password supplied by said

subscriber for an Internet Service Provider (ISP) Net; however, it is an inherent feature to

authenticate before communicate.

9.   Referring to claims 15, and 16, Caswell reference disclose identifying and prioritizing

said subscriber by said identification information within a trouble ticketing system of said

service provider (Figures 10-12; and col. 11, last paragraph).

12.   Referring to claims 17-20, Caswell reference disclose providing a diagnostic unit in

communication with a network (figure 2); receiving, with said diagnostic unit, a communication

from a subscriber unable to communicate with a desired network element (col. 8, lines 33-47);

and allowing communications between said subscriber and said diagnostic unit by accepting data

from said subscriber and with a network element protocol of a establishing a communication link

with the subscriber and sending an indication of the data received from the subscriber to the

selected network element in a protocol consistent (e.g. HTTP) with the network element protocol

(col. 8, lines 33-47, e.g. Subscriber is experiencing a problem with the network; therefore, it

generates a request to the diagnostic terminal which includes information about the subscriber.

The diagnostic terminal then forward the request to the diagnostic server through an open

standard communication protocol , which is Hyper Text Transport Protocol (HTTP)); however,

Caswell fails to teach the protocol which is use between the communication between the

subscriber and diagnostic terminal is utilizing a source protocol inconsistent (e.g. Fault Tolerant

Protocol stack) which is different from the diagnostic terminal communicate with the network

element.

Frowein reference discloses system of capable of receiving a connectivity failure between

the subscriber terminal and the on-line center and relay data from the online center to the

subscribing station and includes a communication portion in the online center and a

communication portion in the subscribing station (col. 10 lines 19-38) (e.g. acknowledge the

communication failure between two endpoints and capable of relaying the data between two end

point is considered to be the fault tolerant protocol stack).

Referring to claim 24, Caswell further discloses the subscriber terminal comprises a DSL

modem (col. 4 lines 62-64 and col. 5 lines 13-19).

Referring to claim 25, Caswell further discloses the subscriber terminal further comprises

a personal computer (col. 4 lines 58-60).

13.   Claims 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Caswell et al. U.S. Patent 5,964,891 in view of Stephanou et al. U.S. Patent 6,513,013.

Caswell reference disclose a subscriber is experiencing a problem with a network and

report it to the diagnostic terminal through a web browser for diagnosis purposes; however,

Caswell fail to teach authenticating a password supplied by said subscriber for an Internet

Service Provider (ISP) Net, and sending an e-mail to a diagnostic unit from said subscriber and

receiving an e-mail from said diagnostic unit by said subscriber.

Stephanou reference discloses an e-mail to a diagnostic unit from said subscriber and

receiving an e-mail from said diagnostic unit by said subscriber (col. 3, lines 34-40; and col. 4,

lines 15-21).

It would have been obvious to one of the ordinary skill in the art at the time of the

invention was made to incorporate Stephanou's teaching into Caswell's method to use email to

communicate between subscriber and diagnostic unit, so to allow email response to the problem

being posed and also allowing back and forth communication over network with will facilitate

solving the customer's problem in an effective and efficient manner.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919.
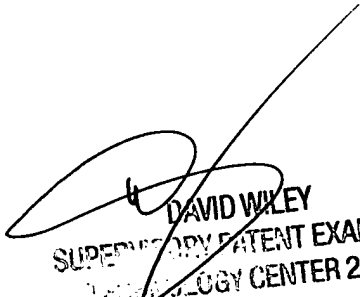
The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

                                                        Phuoc H Nguyen
                                                        Examiner
                                                        Art Unit 2143

March 3, 2006

DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100